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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.L. et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.C.,

Defendant and Appellant,

K.L.,

Defendant and Respondent,

A.L.,

Appellant.

E049159

(Super.Ct.Nos. J219307, J219308,
J219309, J219310 & J219311)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.

Schneider, Jr., Judge. Affirmed.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and
Appellant.

Brent Riggs, under appointment by the Court of Appeal, for Appellant.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Respondent.

Ruth E. Stringer, County Counsel, and Sandra D. Baxter, Deputy County Counsel, for Plaintiff and Respondent.

Minor A.L. (Son 1) appeals after the juvenile court denied his Welfare and Institutions Code section 388 petition.¹ Father, Y.C., has also appealed, contesting the termination of his parental rights to Daughter 1, Daughter 2, and Son 3 at the section 366.26 hearing and joining in Son 1's appeal of the denial of the section 388 petition. Mother, K.L., who did not appeal but is a respondent, joins in the arguments made by Son 1 and Father to the extent they inure to her benefit under California Rules of Court, rule 8.200(a)(5).

The claims on appeal are as follows:

1. The juvenile court erred by denying Son 1's section 388 petition requesting that he be placed with or near his siblings.
2. The juvenile court erred by refusing to find that the sibling exception of section 366.26, subdivision (c)(1)(B)(v) applied to Daughter 1, Daughter 2, and Son 3 and terminating Mother's and Father's parental rights.²

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Father's appeal does not apply to Son 2. He is not Son 2's father, nor has Son 2's father filed an appeal. Mother has not filed her own appeal on behalf of Son 2.

[footnote continued on next page]

We find no error. Hence, we will affirm the termination of parental rights and the juvenile court's denial of Son 1's section 388 petition.

I

PROCEDURAL AND FACTUAL BACKGROUND

A. *Detention*

On January 17, 2008, San Bernardino County Children and Family Services (the Department) filed five separate section 300 petitions for all of Mother's children: Son 1 (then age five), Son 2 (then age four), Daughter 1 (then age two), Daughter 2 (then age one), and Son 3 (then age seven months). The petitions were also brought against Father, who the Department initially claimed was the alleged father of all five children.

The Department had detained the children because Mother had abandoned them. She had been evicted from her home, and her whereabouts were unknown. Daughter 1 and Daughter 2 were left with Mother's friend three weeks prior. Both children were ill and needed medical attention, but the friend had no authorization to seek care. The children had no clothing or food, and both appeared malnourished. Mother contacted the friend and asked her to also take Son 1 and Son 2, as she no longer wanted them. Mother intended to prostitute herself to make money for drugs. Son 3 had reportedly been in the care of a maternal cousin.

[footnote continued from previous page]

For the sake of the sibling exception embodied in section 366.26, subdivision (c)(1)(B)(v), if we were to find that the exception applied and parental rights should not have been terminated, obviously, in the interest of justice, it would apply to the termination of Mother's parental rights of Son 2.

The specific allegations in the section 300 petitions were as follows:

1. Mother had a history of using inappropriate and excessive discipline with all five children, including hitting them with belts and hangers (§ 300, subd. (a));
2. Failure to protect due to Mother's substance abuse; Mother's inability to provide a stable residence (she left her children with acquaintances without adequate provisions in order to prostitute herself to get money for drugs); and the fact that Son 1, Son 2, and Daughter 1 had all tested positive for marijuana and methamphetamine at birth (§ 300, subd. (b)(2));
3. Mother had engaged in acts of violence (§ 300, subd. (b)(3));
4. Mother had engaged in domestic violence with Father and vice versa (§ 300, subd. (b)(4), (5));
5. On January 15, 2008, Mother left Son 1, Son 2, Daughter 1, and Daughter 2 in the care of a friend, without providing any clothing or food for them (§ 300, subd. (b)(6)); and
6. Father had no means to support the children because he was currently incarcerated in state prison (§ 300, subd. (g)).

According to the detention report, Son 1 was very protective of his younger siblings and took care of them. The children reported that they were oftentimes left in the care of Son 1 or with Mother's friends. They also reported that Mother "whoop[ed]" them with her hand, a belt, or a hanger. Son 1 had accidentally burned Daughter 1 on one occasion. They had observed Mother and her friends being physically violent with each

other. Son 1, Son 2, and Daughter 1 were born positive for marijuana and methamphetamine.

Mother had numerous prior referrals to the Department, some of which were unfounded or closed. Father had a criminal history, including battery on a spouse or cohabitant (Pen. Code, § 243, subd. (e)(1)) and robbery (Pen. Code, § 211). He was currently in prison. Mother also had a criminal history, including theft.

Mother was present at the detention hearing held on January 18, 2008. Father was in state prison but was represented by counsel. As to all five children, the juvenile court found that there was a substantial risk to their physical health and emotional well-being if left in Mother's care. The juvenile court ordered that the children continue to be removed from Mother's and Father's custody. Mother denied that she had Indian ancestry.

An amended detention report dated February 8, 2008, added J.P. as Son 2's alleged father. Mother had contacted the Department and wanted to be placed in an in-house drug treatment facility. She admitted that she had been involved in several violent relationships and had trouble controlling her temper. Mother had not submitted to a drug test. She had attended one supervised visit with the children and had acted appropriately. She did not appear bonded to Son 3 because she indicated that Son 3 had mostly been in the care of her cousin since his birth.

On February 4, 2008, Father contacted the Department and advised them that he would be released in 2014 or 2015. He indicated that he was not the father of Son 2. Mother acknowledged that J.P. was the father of Son 2. Mother was visiting with all five children two times a week.

B. *Jurisdiction/Disposition*

The jurisdictional/dispositional report filed by the Department on February 7, 2008, recommended that all five children be removed from Mother's custody and that she be given reunification services. J.P. had not been located, and Father was still incarcerated. Accordingly, the report recommended that no reunification services be granted to the fathers.

The Department noted that reunification was not possible until Mother addressed her substance abuse problems. She also needed to complete anger management and domestic violence courses. Additionally, she would be subjected to drug testing. Despite the instability in the children's lives, they all appeared to be bonded. All five children were thriving in their foster environment, where they had been placed together.

Prior to the contested jurisdictional hearing, Mother participated in mediation. The Department agreed to drop the allegations in the petitions under section 300, subdivision (b)(3) and (6). Some of the other allegations were amended.

On February 27, 2008, the Department filed a report recommending Father not be offered reunification services because his incarceration continued past the time frame for reunifying with his children and because of his violent nature as evidenced by his convictions for robbery and assault with a firearm. Mother had been attending programs and was participating in visitation.

On March 3, 2008, Mother admitted the allegations in the amended petitions as agreed to in her mediation. The juvenile court held a contested jurisdiction hearing in the matter as to Father. Father was present in custody. Father was found to be the presumed

father of Son 1, Daughter 1, Daughter 2, and Son 3. J.P. was found to be the alleged father of Son 2. Father denied any Indian ancestry.

The juvenile court found that all five children came within section 300, subdivisions (a), (b), and (g), because there was a substantial risk that they would suffer serious physical harm or illness if placed in Mother's and Father's care. Mother was granted reunification services for all five children. Father was not granted reunification services.

C. Six- and 12-month Review Reports

In the Department's six-month status review report, it recommended that reunification services be terminated and that a section 366.26 hearing be set to terminate the parental rights of Mother, Father, and J.P.

Mother was pregnant again. On July 15, 2008, she was found in possession of "methamphetamine and baggies for sale." She had not completed her case plan and had missed half of the visitation meetings.

Son 1 and Son 2 had advised their foster mother that they had observed Mother perform oral sex on Father. The boys both admitted that they themselves had performed oral sex on each other. Son 1 had been hit with belts by both Mother and Father. All the siblings were bonded, and the Department indicated that it was important to keep them together. The current foster mother was willing to take some of the children, but she could not handle all five.

K.A., a family friend, was willing to take all five children. Visitation between K.A. and the children had begun because the children did not have a relationship with her; the children were enjoying the visitations.

In an addendum report, the Department recommended that the five children be placed with K.A. and that a section 366.26 hearing to consider guardianship be conducted. K.A. made all the necessary preparations for caring for the five children. She was willing to assume legal guardianship of the children and would consider adoption in the future. Also, K.A. was more than willing to have Mother's unborn child placed in her home, if needed.

On September 3, 2008, at the six-month review hearing, the juvenile court placed the five children with K.A. and Mother's reunification services were terminated. A section 366.26 hearing was set for January 2, 2009. Father was not present in court.

In an interim report filed September 18, 2008, the Department recommended continued placement of the children with K.A. K.A. was committed to maintaining all the children together and maintaining their connection with their family. Son 1 and Son 2 said they wanted to live with K.A., and Mother and Father preferred that the children stay in K.A.'s home.

On September 29, 2008, Father filed a notice of intent to file a writ petition under California Rules of Court, rule 8.450. On November 25, 2008, Father advised this court that he was not seeking to file the aforementioned writ petition; the matter was dismissed.

D. *Change of Placement*

On November 5, 2008, the juvenile court was notified that the children were engaging in maladaptive behavior in K.A.'s home, including temper tantrums, hurting each other, and acting out sexually. On November 14, 2008, the juvenile court signed an order placing Daughter 1 and Daughter 2 in a foster home near K.A.'s home and ordered that the family be given intensive counseling services to address the problems.

E. *Reports for Section 366.26 Hearing*

In a report filed on December 12, 2008, the Department recommended a permanent planned living arrangement (PPLA) for the five children. The three boys were placed with K.A., and the two girls were placed in another foster home.

According to the report, Son 1 had been acting out sexually toward his siblings. He had tried to pull down their pants, perform oral sex on them, and sneak into his sisters' room in the middle of the night. He was currently attending intense counseling. Son 2 claimed that he was taught to act sexually toward his siblings by his Mother's friend. Both girls were also acting out sexually. The Department noted that the siblings were all bonded with each other and with K.A.

K.A. was willing to be the guardian of or adopt all five children if the sexual behavior was addressed. The Department felt that, with the change in behavior, a PPLA was the best action at the time. Also, the Department felt that the girls should remain in their current foster home in order to protect the five children from harming one another.

F. *Son 1's Removal From K.A. and Siblings*

A section 387 jurisdiction/disposition report was filed on February 19, 2009, as to Son 1. The Department recommended that Son 1 be removed from K.A.'s home and that he be placed in a foster home with a recommended PPLA. K.A. reported that Son 1 showed signs of multiple personalities and had violent "rages," which consisted of banging his head against the wall and running into the street saying he wanted to get hit by a car. Son 1 expressed that he wished he was dead. He did not express any concern about being moved to another foster home.

Also, the report indicated that by January 2009, K.A. would have to vacate her residency and was only willing to adopt Son 3 due to the behavior of the older children. She felt that Son 1 would receive better services outside her home. Additionally, it was reported that the girls' foster home could no longer care for them. On February 3, 2009, the juvenile court ordered psychological testing for Son 1. It removed him from K.A.'s home and placed him in another foster home.

Son 1's four siblings were eventually placed with a paternal relative, S.P. S.P. was willing to adopt all five children (to maintain the sibling bond) but understood that it was not appropriate for Son 1 to live with the other four children until his behavior was addressed.

On March 19, 2009, the Department filed an addendum report, recommending that the PPLA was for Son 1 to remain in his current foster home. Son 1 had been doing well in his current foster home and was not acting out emotionally or sexually. Son 1's foster home was located in Moreno Valley, while the other four siblings lived in Compton with

S.P. Both foster families were willing to facilitate visitation between the five children. The eventual plan was to attempt to get Son 1 back with his siblings.

The Department reported to the juvenile court on March 25, 2009, that Son 1 was doing better with counseling and in the new foster home. He was being monitored to determine if he could be placed with his siblings.

On May 4, 2009, the juvenile court found the allegations in the section 387 petition true. The court approved the plan that Son 1 would remain with his foster family but would approve placing Son 1 with S.P. as soon as it was appropriate.

In the July 14, 2009, first addendum report filed by the Department for Son 1, the Department recommended a PPLA leaving Son 1 in his current foster home. The Department indicated that it originally sought to place Son 1 with his siblings but now believed that the foster home was better for him.

According to the report, allegations were made that Son 1 was hit on the leg with a “switch” by S.P. after he accidentally scratched one of his siblings with a toy. The allegation was investigated and determined to be unfounded. S.P. was concerned about Son 1 making such allegations and did not want him making further allegations, which could compromise his siblings’ placement and eventual adoption. Due to her concerns, S.P. did not feel comfortable having Son 1 placed in her home. S.P. stated that she understood the importance of sibling visitation and would help facilitate such visits; however, she did not wish to have any visits in her home.

On August 12, 2009, Son 1's counsel filed a request to change court order pursuant to section 388 (388 petition), requesting that Son 1 be reunited with his siblings. The juvenile court ordered a hearing on the petition.

An interim report was filed for Son 1 by the Department on August 27, 2009. In that report, the Department recommended that Son 1 remain in a separate foster home. The Department insisted the sibling relationship would be maintained through sibling visitation.

An adoption assessment report was filed for Sons 2 and 3 and the two girls on March 11, 2009. The Department recommended that the parental rights of Father and Mother be terminated and that the children be freed for adoption by S.P. Mother's sixth child had been born, but the children were not aware of him. S.P. was committed to maintaining the sibling relationship between all five children.

In the section 366.26 report filed by the Department on April 14, 2009, and in an addendum report filed on July 2, 2009, the Department again recommended that Son 2, Daughter 1, Daughter 2 and Son 3 be freed for adoption by S.P. The Department noted that the five siblings were bonded and appeared to miss one another when they were not together. The Department recommended visitation two times a month between Son 1 and his four siblings. Further, the Department recommended that such visits be increased to weekends and overnight when appropriate. The Department alleged that no exception under section 366.26 applied.

G. *Hearing on Son 1's Section 388 Petition and Section 366.26 Hearing
for Son 2, Daughter 1, Daughter 2, and Son 3*

The combined motion on the section 388 petition and contested section 366.26 hearings were conducted on August 31, 2009, as will be discussed in more detail, *post*. The juvenile court terminated Father's, Mother's, and J.P.'s parental rights to Son 2, Daughter 1, Daughter 2, and Son 3. The juvenile court ordered a PPLA with the current foster parents for Son 1, as there was no legal guardian available. The juvenile court denied Son 1's section 388 petition.

Son 1 and Father filed notices of appeal. On January 7, 2010, Mother filed a joinder letter, joining in both opening briefs to the extent they inured to her benefit.

II

DENIAL OF MINOR'S SECTION 388 PETITION

Son 1, joined by Mother and Father, claims the juvenile court erred by denying his section 388 petition because he was bonded to his siblings and should have been placed with them.

Although not raised by the Department, we reject that Mother and Father can join in Son 1's appellate argument that the juvenile court erred by denying his section 388 petition. Section 388 is clear and unambiguous. "Any person" refers to a person who can "assert a relationship as a sibling" to a child who is a dependent of the juvenile court. (§ 388, subd. (b).) Specifically, any person who files a section 388 petition "shall" identify through which parent the person is related to the dependent child and how he or she is related to the dependent child (i.e., through blood, adoption, or affinity). (§ 388,

subd. (b)(1), (b)(2).) Only a person who is the dependent child's sibling can satisfy these requirements. Hence, we only review the issue as to Son 1, the only person who can show that he is a sibling by "blood, adoption, or affinity." (§ 388, subd. (b)(2).)

A. Additional Factual Background

Son 1 testified at the combined sections 388 and 366.26 hearing. By then, Son 1 was seven years old and in the first grade. He did not like living with his foster parents. He wanted to live with his siblings. He missed them. Son 1 claimed he was a good boy.

Ashley Brooksher was the social worker assigned to Son 1's case. She understood that Son 1 wanted to live with his siblings, but S.P. had advised her that she did not "feel comfortable" having Son 1 in her home. Brooksher expressed that the "most optimal situation" would be to have the siblings together. Brooksher indicated that Son 1 had to be separated from the other children, not only because of his sexual behavior, but also because he acted aggressively toward them.

The intensive counseling services provided to Son 1 had been terminated by the agency providing the services because Son 1's behavior had improved due to his current placement. Brooksher was still concerned and wanted the services to continue.

Brooksher felt the best way to continue the sibling relationship was to maintain visitation as much as possible. Brooksher testified that it would be detrimental to the other four children to remove them from S.P. due to the bond they had established with her.

Brooksher indicated it was not in the best interests of the four siblings to delay the adoption because of their young age—it was important to finalize their permanency.

Brooksher could not say what effect it would have on the four children if they were

separated from Son 1. Both Son 1's foster family and S.P. were willing to facilitate visitation between all five children. Brooksher testified that she would recommend adoption of the four siblings, even if Son 1 never saw them again. Brooksher testified that the four sibling's stability and permanency was more important than maintaining a relationship with Son 1.

The juvenile court denied the section 388 petition.

B. *Analysis*

Section 388, subdivision (b) provides in pertinent part, "Any person, including a child who is a dependent of the juvenile court, may petition the court to assert a relationship as a sibling related by blood, adoption, or affinity through a common legal or biological parent to a child who is, or is the subject of a petition for adjudication as, a dependent of the juvenile court, and may request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child or make any other request for an order which may be shown to be in the best interest of the dependent child." Pursuant to section 388, subdivision (d), "[i]f it appears that the best interests of the child may be promoted by the proposed change of order, recognition of a sibling relationship, termination of jurisdiction, or clear and convincing evidence supports revocation or termination of court-ordered reunification services, the court shall order that a hearing be held" In other words, "if the petition presents any evidence that a hearing would promote the best interests of the child, the court will order the hearing."

(*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

One purpose of a section 388 petition is to enable a child who files the petition to oppose adoption of the other children by asserting the sibling relationship exception at the section 366.26 hearing. This is because siblings who are not part of the termination proceedings have no right to assert the exception at the section 366.26 hearing. (*In re Hector A.* (2005) 125 Cal.App.4th 783, 791-792 (*Hector A.*))

“The section 388, subdivision (b), petition does not call upon the court to weigh the detriment of interfering with the sibling relationship against the advantages to the adoptive dependent of adoption, but merely to determine whether there is a sufficiently close relationship between the siblings that the nonadoptive sibling should be permitted to urge consideration of this factor when a permanency plan for the adoptive child is considered at the section 366.26 hearing. As with other petitions under section 388, the petition should be liberally construed in favor of its sufficiency. [Citations.] If a separate hearing is conducted pursuant to subdivision (c) of section 388, the hearing should be confined to whether there are sibling bonds that will be adversely affected by an adoption, without anticipating the balancing of conflicting interests that will occur at the section 366.26 hearing.” (*Hector A., supra*, 125 Cal.App.4th at p. 795.)

“A petition under section 388, subdivision (a), ‘is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.’ [Citation.] We see no reason why the same standard of review should not apply to a petition under subdivision (b).” (*Hector A., supra*, 125 Cal.App.4th at p. 798.)

Initially, although the juvenile court denied the section 388 petition, it allowed Son 1 to argue that the sibling exception applied at the section 366.26 hearing. To the extent the section 388 petition was filed in order to raise the sibling exception at the section 366.26 hearing, the denial of the petition certainly could not have caused any harm to Son 1.

Son 1 argues that the “aim” of his section 388 petition was different than that in *Hector A*. He claims that section 388, subdivision (b) allows a petition to be filed in order to obtain visitation with siblings or placement with or near the dependent child. To the extent that Son 1’s petition was based on a request for visitation, he was already receiving visitation. Moreover, the juvenile court was not asked to place Son 1 with S.P., and S.P. did not feel comfortable having Son 1 placed with her. The written section 388 petition only requested that Son 1 “be reunited with his siblings.” Counsel for Son 1 argued that Son 1 was not “objecting to the adoption, per se” but that he “wanted to be with his siblings.” If the juvenile court were to conclude that they should be reunited, the question would be whether S.P. would adopt him too or whether another adoptive family should be sought.

Whether we consider Son 1’s section 388 petition to be a request to be placed with his siblings or a request to argue the sibling exception at the section 366.26 hearing, the juvenile court did not abuse its discretion by denying Son 1’s section 388 petition. It was without dispute that there was a close and continuing relationship between Son 1 and his four siblings. However, although the siblings were bonded, that relationship was not without its problems. It certainly can be inferred that Son 1 was the facilitator of the

sexual contact between the siblings. According to the Department's reports, once Son 1 was separated from his siblings, there were no more reports of sexual activity. The juvenile court did not abuse its discretion by determining that although a relationship existed, the children should not be kept together due to the abhorrent behavior that occurred when the five siblings lived together.

Additionally, the Department noted that Son 1 was doing well in his current placement. He no longer needed intensive counseling services, and he was not acting out. Brooksher, however, was concerned that he might still have problems that needed to be addressed.

We cannot find that the juvenile court erred by denying Son 1's section 388 petition.

III

SIBLING EXCEPTION OF SECTION 366.26, SUBDIVISION (C)(1)(B)(V)

Father, joined by Son 1 and Mother, contends that the juvenile court erred by finding that the sibling exception in section 366.26, subdivision (c)(1)(B)(v) did not apply and then terminating parental rights. They claim a lesser plan than adoption should have been ordered.

As noted above, in order to assert his rights at the section 366.26 hearing, Son 1's petition under section 388 had to have been granted. (*Hector A.*, *supra*, 125 Cal.App.4th at p. 792.) Hence, since the section 388 petition was denied, Son 1 cannot raise the issue on appeal. We will address the issue only as it pertains to Father's and Mother's parental rights.

A. *Additional Factual Background*

The juvenile court did not take any further evidence for the section 366.26 determination than set forth, *ante*, at the section 388 hearing. Mother's counsel argued that there was no "parental-relationship" exception that applied, but that it was clear that the siblings were bonded. Mother's counsel argued, "I would argue there is a sibling exception here, and it isn't in the best interest of the children to move forward, at least not on this date" Mother's counsel also argued that the process should be slowed down to see if Son 1 could also be adopted. Mother's counsel asked that the juvenile court not terminate the parental rights, urging the court to select a lesser plan. Father joined in Mother's argument and objected to the termination of parental rights. His preference was that all five children be placed with S.P. Son 1's counsel argued that Son 1 should not be left behind and should be placed with his siblings. He noted that the juvenile court should not take a preference for the happiness of the four children over Son 1's happiness.

Counsel for Son 2, Daughter 1, Daughter 2 and Son 3 argued that the parental rights should be terminated and the children freed for adoption. They were all bonded with S.P. and well cared for.

The Department argued that despite wishing all of the siblings could be placed together, Son 1 had problems, and it was in the best interests of his four siblings to be freed for adoption.

The juvenile court terminated the parental rights of Father, Mother, and J.P., and freed Son 2, Daughter 1, Daughter 2, and Son 3 for adoption. It adopted a PPLA for

Son 1, indicating that he remain long term in his current foster home. The juvenile court also ordered visitation between Son 1 and his siblings, once a month, and that such visitation could be increased.

B. *Analysis*

In general, at a section 366.26 hearing, if the juvenile court finds that the child is adoptable, it must terminate parental rights. (§ 366.26, subds. (b)(1) & (c)(1).) This rule is subject to a number of statutory exceptions (§ 366.26, subd.(c)(1)(A), (c)(1)(B)(i)-(c)(1)(B)(vi)), including the sibling exception, which applies when termination would cause a substantial interference with the sibling relationship.

The juvenile court undertakes a two-step analysis in evaluating the applicability of the sibling relationship exception pursuant to section 366.26, subdivision (c)(1)(B)(v). First, the court is directed “to determine whether terminating parental rights would substantially interfere with the sibling relationship by evaluating the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-952.) “[T]he concern is the best interests of the child being considered for adoption, not the interests of that child’s siblings.” (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822.)

“Reflecting the Legislature’s preference for adoption when possible, the ‘sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a “compelling reason” for concluding that the termination of parental rights would be “detrimental” to the child due to “substantial interference” with a sibling relationship.’ [Citations.] Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 61.) We review the court’s finding on this issue for substantial evidence. (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 947.)

Initially, Father claims that the juvenile court failed to consider the above factors in terminating his parental rights. Although the juvenile court did not specifically state on the record that it was weighing the factors of the sibling exception as outlined above, the parties did not request such a finding. Regardless, a rejection of the sibling exception can certainly be implied from the findings by the juvenile court. The parties argued exclusively that the only exception that applied was the sibling exception. The evidence presented extensively showed a sibling bond. As such, the record supports the trial court considered the sibling exception and found it did not apply under the circumstances.

Mother and Father failed to meet their burden in the lower court that the exception applied to stop the adoption of Son 2, Daughter 1, Daughter 2, and Son 3. There is no dispute that there is a sibling bond between all five siblings. The Department repeatedly

reported that all five children are bonded and that Son 1 acted as a parent to his four younger siblings.

However, in evaluating the nature and extent of the relationship, it was not healthy. When Son 1 was with his four other siblings, they acted out sexually, and Son 1 was reported to act aggressively toward his siblings. When separated, the children did not engage in these activities.

Moreover, even if terminating parental rights would substantially interfere with the sibling relationship, it was certainly in the four younger children's best interests to receive the permanency of adoption rather than continuing the sibling relationship. S.P. was unwilling to adopt Son 1. The placement of the four siblings together outweighs any benefit of not being adopted. There was no adoptive parent available who would take all five children.

Son 1, who is the oldest sibling, clearly suffered the most from Mother's and Father's neglect. He acted out the most, and he engaged in inappropriate sexual relations with his siblings. We cannot say that the juvenile court erred by finding that it was in the best interests of the four siblings to be freed for adoption, even if it meant affecting the sibling bond with Son 1.

Moreover, the record shows that Son 1's foster family and S.P. intended to allow ongoing contact between the children. That visitation could be increased to weekends and overnight visits depending upon Son 1's behavior. Because Son 1's foster family and S.P. were willing to maintain sibling contact, there was no substantial interference with the sibling relationship. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 254.)

Based on the foregoing, Mother and Father did not meet their burden of establishing that the sibling exception applied, and the trial court did not err in terminating their parental rights.

IV

DISPOSITION

The orders appealed from are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

McKINSTER
Acting P.J.

MILLER
J.